

ELRICH CONTRACTING, INC.

CONTRACT NO. V688C1203

VA MEDICAL CENTER WASHINGTON, D.C. VABCA4625 4629

Francis J. Pelland, Esq., Bell, Boyd & Lloyd, Washington, D.C., for the Appellant.

Stacey North Willis, Esq., Trial Attorney; *Phillips L. Anderson, Esq.*, Deputy Assistant General Counsel; and *William E. Thomas, Jr., Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEALS

1. The Board, in its April 18, 1995 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that the Appellant had filed these "protective" appeals in response to VA issued Settlements by Determination containing final decision language.

The Appellant alleged that after encountering a differing site condition, the "parties reached an agreement" concerning "the direct labor and material costs for the additional work." The Appellant further alleged that although the Contracting Officer knew that "the contractor was reserving its claim for time and delay/impact damages, the contracting officer issued bilateral modifications" stating that the Appellant was fully compensated for all costs and time associated with the work, including disruption, suspension and impact costs.

2. When the Appellant returned the bilateral modifications unsigned, he alleged that the Contracting Officer reissued the modifications as settlements by determination containing final decision language. The Appellant concludes by stating that, "the record does not establish the existence of any appealable final decisions." The "protective" appeals of Elrich Contracting, Inc., were received and docketed on April 14, 1995, and assigned docket numbers VABCA4625 through 4629.

3. In its ORDER TO SHOW CAUSE, the Board noted the Contract Disputes Act, 41 U.S.C. §§ 601613 provides the basis for jurisdiction by this Board over claims made by a Contractor against the Government. 41 U.S.C. § 605(a) provides that the statutory prerequisite for invoking the jurisdiction of this Board is the submission of a "claim" by the Contractor which must "be in writing and shall be submitted to the contracting officer for a decision." In the absence of an underlying claim on which to base a final decision the Board is without jurisdiction. *George Hyman Construction Co.*, VABCA No. 3078, 901 BCA ¶ 22,551; *Southland Construction Co.*, VABCA Nos. 2279, 2544, 891 BCA ¶ 21,271 at 107,27475.

4. We granted the Government until *May 8, 1995*, to SHOW CAUSE why these appeals should not be dismissed for lack of jurisdiction. In its response dated May 8, 1995, which it has captioned MOTION TO DISMISS, the Government concedes that although "[e]ach Settlement by Determination contained final decision language," the Appellant "has not filed a written claim with the contracting officer."

5. Given the facts before the Board, we conclude that we are without jurisdiction to

consider the matter. Accordingly, the appeals of *Etch Contracting' Inc.*, VABCA4625 through 4629, are hereby dismissed for lack of jurisdiction pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: **May 10, 1995**

GUY H. MCMICHAEL III
Chief Administrative Judge
Panel Chairman

We concur:

DAN R. ANDERS
Administrative Judge

MORRIS PULLARA, JR.
Administrative Judge